i.84
% 09.01.2007

Present: Mr. R.K.Mehta, Adv. for the petitioner.

+CM(M) No.33/2007
*

1. Petition under Article 227 of the Constitution of India raises a challenge to the order dated 9.8.2005 as also a subsequent order dated 27.7.2006 passed by the learned trial court.

2. Ex facie, challenge to the order dated 9.8.2005, in the petition filed on 8.1.2007 is highly belated.

3. As regards the challenge to the second order, suffice would it be to note that plaintiff's application under Order 16 Rule 1 CPC for summoning certain witnesses was considered and decided vide order dated 9.8.2005. Vide said order, prayer made to summon private witnesses was disallowed. Official witnesses were permitted to be summoned.

4. Certain official witnesses were summoned for 27.7.2006. Examination-in-chief by way of affidavit of a private witness was filed. The learned trial Judge has held that the order dated 6.8.2005 concludes the issue pertaining to the

Signature Not Verified
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

witnesses to be summoned and examined and in said view of the matter declined to receive affidavit by way of evidence of the private witness (Inder Singh).

5. It is urged by learned counsel for the petitioner that no prejudice would be caused to the respondent (defendant) if Inder Singh is examined.

6. I am afraid, this issue ought to have been raised by the petitioner when order dated 9.8.2005 was passed. Having allowed the said order to attain finality, issue cannot be reopened by way of a collateral proceeding.

7. It is then sought to be urged that the impugned order dated 27.7.2006 is bad in law inasmuch as it has closed plaintiff's evidence.

8. The learned trial court has noted that issues were framed on 4.4.2000 and since then plaintiff was lingering on with the trial court on one pretext or the other.

9. Perusal of the order dated 27.7.2006 shows that three official witnesses were summoned. PW-5 was examined and cross examined. Rajinder Raman, the summoned witness was discharged as per statement made by counsel for the plaintiff. PW-4 was discharged after recording that the said

witness was re-called for further examination-in-chief to prove some certified copy, which was not even filed on record. The order records that the counsel for the plaintiff is not willing to further examine PW-4.

10. It is urged by learned counsel that statements attributed to counsel for the petitioner that the counsel was not further willing to examine PW-4 and counsel for the petitioner sought discharge of Rajinder Raman are wrongly recorded in the impugned order.

11. Since, this part of the order is apparently based on a concession made by counsel for the petitioner, if no such concession was made, petitioner ought to move an application before the learned trial Judge pointing out that counsel's concession is wrongly recorded.

12. I grant liberty to the petitioner to move an appropriate application before the learned trial Judge, restricted and limited to the concessions recorded by counsel for the plaintiff in the order impugned.

13. Granting liberty as aforesaid, petition is dismissed.

PRADEEP NANDRAJOG, J

January 09, 2007
mm